

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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AUGUST KINGBIRD,

Case No. 19-cv-0452 (NEB/DTS)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

THOMAS ROY, EMILY JOHNSON  
PIPER, NANCY JOHNSTON, LORI  
SWANSON, MINNESOTA ATTORNEY  
GENERAL'S OFFICE, MINNESOTA  
SENTENCING COMMISSION, and JANE  
AND JOHN DOES,

Defendants.

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In an order dated March 28, 2019, this Court ordered Plaintiff August Kingbird to file an amended pleading presenting his individual claims as well as a new, individualized application to proceed in forma pauperis. See Order 3, ECF No. 3. Kingbird was given until April 27, 2019, to file these materials, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. See Fed. R. Civ. P. 41(b).

That deadline has now passed, and Kingbird has not filed an amended pleading or a new application to proceed in forma pauperis. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See *Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

### RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: May 9, 2019

s/David T. Schultz  
DAVID T. SCHULTZ  
United States Magistrate Judge

### NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).